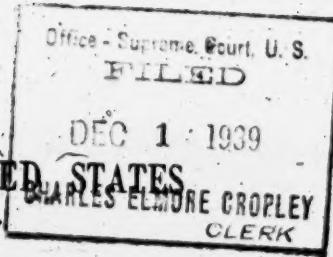


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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1939



No. 120

ERNEST NEWTON KALB AND MARGARET KALB,
His Wife,

vs.

Appellants,

HENRY FEUERSTEIN AND HELEN FEUERSTEIN,
His Wife.

No. 121

ERNEST NEWTON KALB,

vs.

Appellant,

ROSCOE R. LUCE, HENRY FEUERSTEIN, HELEN
FEUERSTEIN AND GEORGE O'BRIEN.

APPEALS FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

BRIEF OF THE APPELLANTS.

WILLIAM LEMKE,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889

No. 120

ERNEST NEWTON KALB AND MARGARET KALB,
HIS WIFE,

vs.

Appellants,

HENRY FEUERSTEIN AND HELEN FEUERSTEIN,
HIS WIFE.

No. 121

ERNEST NEWTON KALB,

vs.

Appellant,

ROSCOE R. LUCE, HENRY FEUERSTEIN, HELEN
FEUERSTEIN AND GEORGE O'BRIEN.

BRIEF OF THE APPELLANTS.

Nature of Cases.

These cases are here on appeals from final judgments of the Supreme Court of Wisconsin, the highest court in that State. The cases arose under Section 75 of the Bankruptcy Act, being Section 203, Title 11, Bankruptcy, U. S. Code, as amended by Section 203, Title 11, Bankruptcy

Supplement 4, U. S. Code. The question involved is one of jurisdiction between the State Court and the United States District Court under Section 203 as amended.

Both of these cases arose from the same facts and transactions. Both involve the same question of law and the decision in one must necessarily govern the decision in the other.

Case No. 120 involves the question of appellants' title and right of possession to their farm under the jurisdiction of the United States District Court, proceeding under Section 75 of the Bankruptcy Act. (Case No. 120, R. 1 to 4, inc.)

Case No. 121 is a damage suit brought by appellant, Ernest Newton Kalb, against the respondents, Roscoe R. Luce, Henry Feuerstein, Helen Feuerstein and George O'Brien, based upon a conspiracy to obtain possession of the appellant's farm by trespass, assault, battery and false imprisonment. The question here is whether or not the appellant was in lawful possession of his farm, under the supervision of the United States District Court, under the provisions of Section 75 of the Bankruptcy Act, when he was forcibly evicted by the respondents. (Case No. 121, R. 1 to 7, inc.)

Opinion Below.

The Supreme Court of Wisconsin wrote its principal opinion in case No. 121, affirming the order sustaining the demurrer to the complaint. 228 Wisconsin 519; 279 Northwestern 685. The court also wrote its principal opinion on the motion for rehearing in case No. 121, *Kalb v. Luce, et al.*, 280 Northwestern 725. (Case 121, R. 14 to 16.)

These opinions the Supreme Court of Wisconsin adopted as its opinions when it affirmed the order dismissing the complaint in case No. 120. 228 Wisconsin 525; 279 Northwestern 687.

The Supreme Court of Wisconsin also made this opinion its opinion when it affirmed the judgments in both case No. 120 and 121. 231 Wisconsin 186; 185 Northwestern 431.

Therefore, to save the time of this Court, may we suggest that the only reasons given by the State Supreme Court for making the judgments final in both case No. 120 and 121 are set forth in the opinion of that court in 228 Wisconsin 519; 279 Northwestern 685, and, on rehearing, 280 Northwestern 725.

Jurisdiction.

Appeal was allowed in both of the above cases by the Supreme Court of Wisconsin to the Supreme Court of the United States under Section 344, Title 28, Judicial Code. (Case No. 120, R. 14 and 15. Case No. 121, R. 23 and 24.) The Supreme Court of the United States has jurisdiction because the validity and proper construction and interpretation of Section 203, Title 11, Bankruptcy, U. S. Code, as amended, a Federal statute, is involved. (Jurisdiction of the Supreme Court, Page 107, Section 60.)

Statement of the Case.

The State Supreme Court affirmed the orders sustaining the demurrers to the complaints and affirmed the judgments dismissing the appellants' actions. It denied the motions for rehearing. (Case No. 120, R. 7, 8 and R. 13, 14. Case No. 121, R. 9, 10 and 14.) Therefore all the material allegations of the complaints stand admitted. (Case No. 120, R. 1 to 4, inc. Case No. 121, R. 1 to 7.)

The appellants are farmers, husband and wife, who cultivated, resided upon and made their home on the 120-acre farm here in question. (Case No. 120, R. 1, 2, 3, and 4. Case No. 121, R. 1 and 2.)

Prior to March 7, 1933, the appellants had executed and delivered to the respondents a mortgage on said farm to

secure an indebtedness. (Case No. 120, R. 1. Case No. 121, R. 1 and 2.)

On April 21, 1933, foreclosure proceedings were begun in the Circuit Court of Walworth County, Wisconsin, and a judgment of foreclosure was entered on that date. (Case No. 120, R. 1. Case No. 121, R. 2.) Under the State law no sale can be made or advertised until the expiration of one year from date of judgment. Wisconsin Statutes, 1935, Sec. 278.10 Foreclosure.

On October 2, 1934, appellants filed their petition in the United States District Court, Eastern District of Wisconsin, under Section 203, Title 11, Bankruptcy, United States Code. (Case No. 120, R. 2. Case No. 121, R. 2.)

On June 27, 1935, after the decision of the Supreme Court of the United States in the *Radford* case, 295 U. S. 555, holding subsection (s) of Section 203 unconstitutional the United States District Court dismissed the appellants' petition. (Case No. 120, R. 3. Case No. 121, R. 2.)

On July 20, 1935 the Sheriff of Walworth County sold the farm under the judgment of foreclosure to the mortgagees, the respondents, but the sale was not confirmed at that time. (Case No. 120, R. 2. Case No. 121, R. 3.) Under the Wisconsin statute and under the decisions of the Supreme Court of that State title remains in the mortgagor until confirmation of sale and delivery of the sheriff's deed. Wisconsin Statutes, 1935, Sec. 278.17 Execution and Effect. *Gerhardt v. Ellis*, 134 Wisconsin 195.

On August 28, 1935, Congress amended some of the provisions of Section 203 and added a new subsection (s). Section 203, Title 11, Bankruptcy, Supplement 4, United States Code.

On September 6, 1935, after the above amendments, the United States District Court, Eastern District of Wisconsin, vacated its order of dismissal of June 27, 1935, and rein-

stated appellants' petition under Section 203, Title 11, Bankruptcy, U. S. Code, as amended. *On the same day a certified copy of the order of the District Court reinstating appellants' petition was served on the Judge of the Circuit Court of Walworth County.* (Case No. 120, R. 2. Case No. 121, R. 2.)

On September 9, 1935, when the motion for confirmation of the sheriff's sale was to be heard, *a certified copy of the order of reinstatement by the United States District Court was filed with the Circuit Court of Walworth County.* The hearing on the motion for confirmation of sale was deferred without date. (Case No. 120, R. 2. Case No. 121, R. 2.)

On September 16, 1935, the Judge of the Circuit Court of Walworth County, *without notice to appellants and with full knowledge of the reinstatement of appellants' petition,* confirmed the sale. (Case No. 120, R. 2 and 3. Case No. 121, R. 3.) This, although the laws of the State of Wisconsin require notice. Wisconsin Statute, 1935, Sec. 278.105 Application for Confirmation.

On September 20, 1935, the sheriff's deed to the mortgagee purchasers was recorded in the office of the Register of Deeds of Walworth County in Volume 240 of Deeds, page 464. (Case No. 120, R. 3. Case No. 121, R. 3.)

On December 16, on petition of the mortgagee purchasers, respondents, the Judge of the Circuit Court directed a writ of assistance to issue, and on the same day the Clerk of the Court issued the writ. (Case No. 120, R. 3. Case No. 121, R. 3 and 4.)

Thereafter, on March 12, 1936, the sheriff of Walworth County, Wisconsin, together with other persons, went to the premises of appellants and with force and arms broke into appellants' home and beat the appellant, Ernest Newton Kalb, in the presence of his wife and family; evicted them from their farm and placed the respondents in possession. (Case No. 120, R. 4. Case No. 121, R. 4.)

Case No. 120.

On August 31, 1937, appellants started the action in the Circuit Court of Walworth County which involves the question now before this Court. In that action the appellants asked that the sheriff's deed be annulled and be cancelled and expunged from the records of the Register of Deeds; that the respondents be removed from the farm and that appellants be replaced in possession (R. 1 to 4, inc.).

On September 17, 1937, the respondents demurred to the above complaint, thereby admitting the material facts set forth in the complaint (R. 4 and 5).

On December 20, 1937, the Judge of the Circuit Court of Walworth County sustained the demurrer (R. 5 and 6).

On January 3, 1938, the Circuit Court of Walworth County entered final judgment (R. 10). On April 20, 1938, the Supreme Court of the State of Wisconsin affirmed said judgment (R. 13 and 14). From that final judgment the case is before this Court on appeal.

Case No. 121.

On or about August 31, 1937, the appellant, Ernest Newton Kalb, started the action in the Circuit Court for Walworth County which involves the question now before this Court. In that action appellant asks for damages based upon a conspiracy between the respondents to obtain possession of appellant's farm by trespass, assault, battery, false imprisonment and unlawful eviction (R. 1 to 7).

To this complaint the defendants interposed demurrers, thereby admitting the material facts set forth in the complaint. (R. 7 and 8).

On December 21, 1937 and December 1, 1938, the Circuit Court of Walworth County sustained the demurrers (R. 9, 17 and 18).

On May 17, 1938 and on December 29, 1938, the Circuit Court of Walworth County entered final judgment in the

case (R. 9, 10, 18 and 19). On April 20, 1939, the Supreme Court of the State of Wisconsin affirmed said judgment (R. 22 and 23). From this final judgment the case is now before this Court on appeal.

Question Involved.

The sole and only question involved in both of these cases on this appeal is whether or not the provisions of subsections (n), (o), (p) and (s) of Section 203, Title 11, Bankruptcy, U. S. Code, as amended by Section 203, Title 11, Bankruptcy, Supplement 4, U. S. Code, are mandatory and self-executing. We submit they are. The ultimate question is whether or not the filing of a farmer-debtor's petition under Section 75 of the Bankruptcy Act is notice to the world that the exclusive jurisdiction of all the farmer-debtor's property is in the Federal Court of Bankruptcy. Again, we submit that it is.

The decisions of the Supreme Court of the State of Wisconsin would have us believe that it is a divided jurisdiction between the Federal and State Courts; that unless the Court of Bankruptcy prohibits the State Courts by some kind of stay order that then, in their discretion, they are at liberty to dissipate the farmer-debtor's estate. We feel the Lower Court is in error. *There is no divided jurisdiction in Section 203 of the Bankruptcy Act as amended.*

Specification and Assignment of Errors.

Case No. 120.

I.

The Supreme Court of Wisconsin erred in affirming the order of the Circuit Court of Walworth County sustaining the demurrer to the complaint.

II.

The Supreme Court of Wisconsin erred in affirming the judgment of the trial court dismissing the plaintiffs' complaint.

III.

The Supreme Court of Wisconsin erred when it held that Section 203, Title 11, Bankruptcy, U. S. Code, as amended by Section 203, Title 11, Bankruptcy, Supplement 4, U. S. Code, was not mandatory and self-executing but that the State Court had jurisdiction unless a stay order was issued by the Federal Court.

Case No. 121.

I.

The Supreme Court of Wisconsin erred in affirming the orders of the Circuit Court for Walworth County sustaining the demurrers of the respondents to the complaint.

II.

The Supreme Court of Wisconsin erred in affirming the judgment of the trial court dismissing the complaint.

III.

The Supreme Court of Wisconsin erred when it held that Section 203, Title 11, Bankruptcy, U. S. Code, as amended by Section 203, Title 11, Bankruptcy, Supplement 4, U. S. Code, was not mandatory and self-executing but that the State Court had jurisdiction unless a stay order was issued by the Federal Court.

Argument.

As stated before, the sole and only question involved in both of these cases is whether, after the farmer-debtor files

his petition under Section 75 of the Bankruptcy Act, the Federal Court has sole and absolute jurisdiction of all of his property to the exclusion of State courts.

The Supreme Court of the United States has held that *the filing of a petition in bankruptcy is notice to all the world that the sole jurisdiction of the bankrupt's property is in the Federal Court.* Yet the Supreme Court of Wisconsin arrived at a different conclusion. It says in its opinion:

"It is the contention of the plaintiff that this statute is self executing—that is, that it requires no application to the state or federal court in which foreclosure proceedings are pending for a stay; in other words, that it provides for a statutory and not for a judicial stay. Plaintiff's claims under the bankruptcy act present a question which clearly arises under the laws of the United States and therefore present a federal question upon which determination of the federal courts is controlling.

"It has been held by the circuit court of appeals for the ninth district, Hardt v. Kirkpatrick (1937), 91 F. (2d) 875, that a stay provided for by sec. 75 (o) and sec. 75 (s) is a judicial stay and not a statutory stay. . . . (Case No. 121, R. 12.)

The State court in its opinion cites with approval *In re Lowmon*, 79 F. (2d) 887, but it inadvertently overlooked the fact that that case was in effect twice overruled. First, in the *Wright v. Vinton Branch Mountain Trust Company*, 300 U. S. 440, and then again in the case of *Wright v. Union Central Life Insurance Company*, 304 U. S. 502.

Even before Section 75 of the Bankruptcy Act was passed the courts universally held that there was no divided jurisdiction over the bankrupt's property between the Federal courts of bankruptcy and State courts.

"Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in

the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has *exclusive jurisdiction*, and that court's possession and control of the estate *cannot be affected* by proceedings in other courts, State or Federal. Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734, 737, and cases cited. Such jurisdiction having attached control of the *administration of the estate cannot be surrendered even by the court itself.* *Id.*, 739. '*The filing of the petition is a caveat to all the world and in fact an attachment and an injunction.*' May *v.* Henderson, 268 U. S. 111, 117." Gross *v.* Irving Trust Co., 289 U. S. 342.

"When a statute is plain and unambiguous in its terms and not susceptible of more than one construction, courts are not concerned with the consequences that may result therefrom, but must enforce the law as they find it. If the meaning of a statute is plain, and its provisions are susceptible of but one interpretation, its consequences, if objectionable, can only be avoided by a change of the law itself, to be effected by legislative, and not judicial, action; the wisdom or policy of the law, the motives that prompted its enactment and the reasonableness or justice of its provisions cannot be taken into consideration by the courts in construing the statute." And cases there cited, 25 R. C. L., Statutes, Paragraph 255.

"Statutes must have a rational interpretation, to be collected not only from the words used, but from the policy which may be reasonably supposed to have dictated the enactment, and the interpretation should be rigorous or liberal, depending upon the interests with which it deals. * * * A remedial statute must be construed liberally so as to afford all the relief within the power of the court which the language of the act indicates that the legislature intended to grant." And cases there cited, 25 R. C. L., Statutes, Section 299.

Surely Section 75 did *not weaken* this jurisdiction but *strengthened* it. In fact it *made* that jurisdiction *more positive* than in any other section of the Bankruptcy Act.

When Congress enacted this Section it had ~~for~~ its object the public welfare—the protection of the submerged farmers of the nation. It intended the Act to be *mandatory* and *self-executing*, and we feel it did so in plain simple language. We set forth below the applicable portions of Section 75, U. S. C., Sup. 4, Title 11, Section 203, Subsections (n), (o) and (p).

“(n) *The filing of a petition . . . praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.*

“In all cases where, *at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section.* . . .

“(o) *Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation*

or other disposition of the composition or extension proposal by the court;

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

Again, subsection (s)

"(4) * * * If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession and the property returned to the possession of such farmer, under the provisions of this Act. * * *"

In *Wright v. Union Central*, 304 U. S. 502, this court decided that all rights of redemption existing at the filing of a

petition under Section 75 are preserved and that all proceedings taken in a State court subsequent to the filing of the petition are void. In that case, two final State decisions had held that the farmer debtor's rights of redemption had been extinguished during the pendency of the farmer debtor proceedings under Section 75 in the bankruptcy court.

Again, on page 514 the court in its opinion says:

"The debtor has a right of redemption of which the purchaser is advised, and until the right of redemption expires the rights of the purchaser are subject to the power of Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. The person whose land has been sold at foreclosure sale and now holds a right of redemption is, for all practical purposes, in the same debt situation as an ordinary mortgagor in default; both are faced with the same ultimate prospect, either of paying a certain sum of money, or of being completely divested of their land."

On page 516 the opinion continues: "Any purchaser at a judicial sale must purchase subject to the possibility of the exercise of the bankruptcy power in a manner consonant with the Fifth Amendment. Property rights do not gain any absolute inviolability in the bankruptcy court because created and protected by state law. Most property rights are so created and protected."

"The exclusive jurisdiction of the bankruptcy court is so far in rem that the bankrupt's estate is regarded as in custodia legis from the filing of the petition" Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300. Commercial Bank v. Buckner, 20 How. 108.

"An attachment of the bankrupt's property after the filing of a petition and before adjudication cannot operate to remove the bankrupt's estate from the jurisdiction of the bankruptcy court for the purpose of administration under the Act of Congress." Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300. Cameron v. United States, 231 U. S. 710.

Cannot Surrender Jurisdiction.

"For the court to afford the relief which the section as amended contemplates, it is necessary that the *exclusive* and *paramount jurisdiction* of the court over the *property* of the bankrupt *be maintained*; and there can be no question but that the provisions of subsections (n) and (o) apply as well to proceedings continued under subsection (s) as to proceedings under the other provisions of section 75. * * * And we do not think that the right to stay proceedings in the State court is precluded because a sale has taken place in foreclosure proceedings if there has been no confirmation of the sale." *Bradford v. Fahey*, 76 F. (2d) 628 (C. C. A. 4th).

In the case of *In re O'Brien*, C. C. A. 2, 78 F. (2d) 715, when the farmer debtor filed his petition under Section 75, there was pending a suit against him on promissory notes. Thereafter a judgment was taken on the notes which became, by State law, a lien upon the farmer debtor's property. The court held the lien to be void saying:

"On the face of the statute it is *entirely clear* that Congress intended the bankruptcy court to have *exclusive jurisdiction* over the farmer's property *from the moment he should file a petition* for relief under section 75. This is *inferentially* shown by the final sentence of subsection (e), Section 75, and is *expressly stated* in subsection (n), Section 75, * * *

"And subsection (o), Section 75, *specifically declares* that neither proceedings affecting title nor proceedings for the recovery of any debt *shall be instituted* or, if already instituted, *maintained* against the farmer or his property *at any time after the filing of the petition and prior to the confirmation or other disposition* by the court of the composition or extension proposal. These provisions put it beyond debate that after the filing of the farmer's petition no creditor was to be

permitted to better his position by litigation in another court. See *Bradford v. Fahey* (C. C. A. 4th Cir.), 76 F. (2d) 628, 637; *In re Dickinson* (D. C. Wyo.) 9 F. Supp. 227, 229; *Eaves v. Glenn* (D. C., Tex.), 9 F. Supp. 647, 648. Hence the bank's judgment improperly taken after O'Brien had filed his petition in the court below *cannot impose any valid lien* on the debtor's property."

In the case of *Byerly v. Union Joint Stock Land Bank*, C. C. A. 6 recently decided and reported 106 F. (2d) 576, the court says:

"The appellant and his farm were in the *exclusive jurisdiction* of the bankruptcy court *from the filing of his petition* on November 19, 1934 (subsection (n) above quoted; *Hoyd v. Citizens Bank*, *supra*, p. 107), until the petition and amended petition were dismissed on August 26, 1935.

"We think that the Bank's deed was *also void*. It was based upon the confirmation of the sale *not only unauthorized but specifically prohibited* (subsection (o)). Confirmation was essential to the validity of the Bank's Title (*Hoyd v. Citizens Bank*, *supra*, p. 108) *but there can be no valid confirmation of a void sale*.

"We think that appellant has never been divested of his property rights in the farm and that the bankruptcy court had *exclusive jurisdiction* (subsection (n)) at the time the order of disclaimer was entered."

In the above case a foreclosure sale was advertised in the State court when the farmer debtor filed his petition under Section 75. The Federal court issued a restraining order, staying the sale. Later the court modified the restraining order, permitting the sale but restraining confirmation.

The farmer debtor then amended his petition and asked to be adjudicated a bankrupt under the original Section

75 (s). When subsection (s) was held unconstitutional the petition and the amended petition were dismissed. The State court confirmed the sale and the purchaser received and recorded his deed.

After the enactment of the new subsection (s) the bankruptcy court reinstated the farmer debtor's amended petition under the present Section 75 (s). But the bankruptcy court refused to assume jurisdiction over the farmer debtor's farm upon the ground that the State court, having confirmed the foreclosure sale during the interval when all the proceedings under Section 75 had been dismissed, had completely divested the farmer debtor of his title. But, as we have seen in the above decision, the Circuit Court of Appeals in the Sixth Circuit reversed the District Court and held that even though the State court had complete jurisdiction when it confirmed the sale, *the confirmation was void because the sale was void.*

In *Hoyd v. Citizens Bank*, C. C. A. 6, reported in 89 F. (2d), 105, the farmer debtor filed his petition under Section 75 after foreclosure sale in the State court but before confirmation. Coincident with the filing of the petition the bankruptcy court issued an order restraining further proceedings in the State court. This restraining order was later vacated by the bankruptcy court, whereupon the State court confirmed the sale. The Circuit Court of the Sixth Circuit held that notwithstanding the vacation of the restraining order the confirmation of the sale by the State court was rendered void by the provisions of Section 75 (n) and (o). The court said:

"We conclude that as the sale had not been confirmed at the time of filing the petition, appellant's equity of redemption had not been barred, and that it constituted 'property' which was subject to the jurisdiction of the federal court under subsection (n). The foreclosure proceedings and the proceedings for sale thereunder

were therefore stayed by the operation of subsection (o).

under the mandatory provisions of subsection (o), all proceedings in the foreclosure action, including sale, were stayed after the filing of the debtor's petition and were of no effect."

"When the lien of an attachment from a state court is annulled by an adjudication in bankruptcy, such court loses jurisdiction of the property, which passes into the exclusive jurisdiction of the court of bankruptcy. • • •

"Where a state court which has obtained possession of property by attachment loses its jurisdiction by operation of a federal law, as by an adjudication in bankruptcy which annuls the attachment and transfers exclusive jurisdiction over the property to the bankruptcy court, the question of comity cannot affect such jurisdiction."

In re Tune, 115 F. 906. *Stellwagen v. Clum*, 245 U. S. 605.

"Bankruptcy supersedes an action in a state court begun within four months prior thereto by way of attachment, statutory proceedings in insolvency, or receivership for settlement and distribution of the debtor's property."

Louisville Realty Co. v. Johnson, 290 F. 176; *White v. Schloerb*, 178 U. S. 542.

In *Shadley v. Ludwig*, C. C. A. 6, recently decided and reported on Page 51616, C. C. H. Bankruptcy Law Service. The farmer debtor's farm was sold in a foreclosure sale a few days after the farmer debtor filed his petition under Section 75 of the Bankruptcy Act. The State court confirmed the sale. The purchaser was a stranger to both the foreclosure proceedings in the State court and to the proceedings under Section 75 in the bankruptcy court. He claimed that as an innocent purchaser for value he was unaffected by the

filing of the petition under Section 75. In dismissing the claim of the purchaser the Court said:

"It is urged that subsection (o) does not apply to appellee because he is not the mortgagee nor a creditor of the farmer debtor but simply a third party, purchaser at the sheriff's sale. *But the statute makes no such exception*, and its terms are equally applicable to all classes of purchasers. Obviously the section cannot be mandatory as to one class of persons and directory as to another class. *The sheriff had no power to sell, and hence could not confer title on the purchaser.*"

Cases Relied Upon Below.

The Supreme Court of Wisconsin cites the following decisions of the Supreme Court of the United States as authority for its decision that a State court could divest the farmer debtor of his property after he filed his petition under Section 75 of the Bankruptcy Act: (1) *Hardt v. Kirkpatrick*, C. C. A. 9, 91 F. (2d) 875. (2) *In re Arend*, 8 Fed. Supp. 211. (3) *In re Lowmon*, C. C. A. 7, 79 F. (2d) 887.

We have already discussed the decision *In re Lowmon*, which in effect has been twice overruled by the Supreme Court of the United States. That erroneous decision was based upon the grounds that certain parts of Section 75 were unconstitutional. That issue has been effectively disposed of by two decisions of this Court. Whatever else the Court may have said in that decision was '*obiter dicta*' and has very little if any bearing on the issue here.

The decision in the *Kirkpatrick* case is not only not applicable because it adjudicated facts entirely different from those in the present cases, but it has in effect been overruled by *Wright v. Union Central*, 304 U. S. 502. That case did not deal with the farmer debtor under subsections (a) to (r) but dealt with him under Section 75 (s). Therefore it is not an authority here.

The *In re Arend* case has absolutely no application to this case and is in fact sound law but misapplied. In that case the period of redemption had expired before the petition was filed and title had passed beyond the control of the farmer debtor or the court. Therefore it is no authority whatsoever in the cases here at bar.

On Rehearing.

On rehearing the Supreme Court of Wisconsin held that the *Wright v. Union Central* case did not dispose of the issues here involved. It is true that it did not do this in so many words but the facts in that case are that the Union Central Life Insurance Company had been allowed to foreclose its mortgage, to have the sale confirmed, and had received a certificate of sale, and a deed in foreclosure was issued and delivered to it on July 20, 1936.

In that case the Federal District Court held that it had no jurisdiction because the property had been sold before Wright had filed his petition and that the right of redemption was not such a property right as would give jurisdiction. That decision was confirmed by the Circuit Court of Appeals of the Seventh Circuit, but that decision was reversed by the Supreme Court of the United States and jurisdiction was resumed by the District Court in accordance with the decision.

Would Cause Confusion.

The Supreme Court of Wisconsin fears that if Federal courts were to assume the sole and absolute jurisdiction in cases under Section 75 of the Bankruptcy Act that then there would be great confusion in titles. That fear is rather far fetched. This question is not for the Supreme Court of Wisconsin to determine. *Congress determined it and it accepts full responsibility.* Congress had a real issue, not a speculative one, before it when it was called upon to deal with submerged agriculture.

This same argument could have been made against setting aside transfers of real estate property made four months prior to the filing of a petition under general bankruptcy. But here there has been no great confusion. Abstractors of real estate titles invariably search the record of the United States District Court or at least obtain a certificate from the clerk.

The courts must be guided by the language of an Act of Congress and not by their fears. This Act must not be confused with State acts. It is an Act passed by the Congress of the United States on the subject of bankruptcy passed under the grant of power given it by the Federal Constitution.

"Congress shall have power . . . to establish uniform laws on the subject of bankruptcy throughout the United States,"

and

"to make all laws which will be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof." (U. S. Constitution, Art. I, par. 8.)

Again,

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Article VI.

On the subject of bankruptcy, the Constitution vests full and complete, not only partial, legislative power in Congress. Any State law must give way to the National law.

That is the mandate of the Constitution. There is no limitation on this power, save and except such as may be found in the Fifth Amendment.

State Court Had Notice.

The records in both of these cases show that the State Court *had notice* of the fact that appellants' petition under Section 75 of the Bankruptcy Act *had been reinstated* on September 26, 1935 and that the order dismissing the petition on the twenty-seventh day of June, 1935, *was vacated*. (Case No. 120, R. 2. Case No. 121, R. 2.)

In spite of this notice the court proceeded and confirmed the sale on the sixteenth day of September, 1935 without notice to the appellants and in utter disregard of the sole and exclusive jurisdiction of the court of bankruptcy. While no such notice is necessary the fact is that under the law the filing of the petition is notice in itself not only to State courts but to all the world. *Yet, in this case the State court had actual notice!*

In *Hoyd v. Citizens Bank*, C. C. A. 6, 89 F. (2d) 105, the Court says:

"Under the mandatory provisions of subsection (o) all proceedings in the foreclosure action, including sale, were stayed after the filing of the debtor's petition and were of no effect."

In the case of *Wilcons v. Penn Mutual Life Ins. Co.*, C. C. A. 10, 97 F. (2d) 417, the Court says:

"The jurisdiction of the bankruptcy court attaches on the filing of the petition. Thereafter its power is exclusive and paramount as to all the bankrupt's property not in the possession of some other court. A suit to foreclose a mortgage is not a proceeding in rem. Moreover, the farmer was still in possession of the 400 acres, deeds had not been issued to the purchasers, and the district judge entered an order approving the filing

of the farmer's petition. But if the farmer's interests and rights in the property had terminated, then subsection (o) provides a remedy to the true owner. Whether appellees' names are in or out of the bankruptcy files and proceedings *has no effect on the jurisdiction of the bankruptcy court conferred by subsection (n)*, which coupled with subsections (o) and (p) *operate as an injunction against every one unless and until lifted in the way provided by subsection (o).* Jurisdiction is the power to decide wrongly as well as rightly."

Decisions Without Jurisdiction Void.

The acts of a court without jurisdiction are a nullity. *Wright v. Union Central Life*, 304 U. S. 502. A court when it proceeds without jurisdiction is not a court. Its acts are void.

Bouvier's Law Dictionary, page 442: "Acts which are done by a court which has no jurisdiction either over the person, the cause or the process, are said to be *coram non judice*. Such acts have no validity."

13 *Corpus Juris*, "Coram non judice", page 1235: "When a suit is brought and determined in a court which has no jurisdiction in the matter, it is then said to be *coram nonjudice*, and the judgment is void; so acts done by a court which has no jurisdiction either over the person, the cause, or the process, are said to be *coram non judice*."

14 *Am. Jur.*, "Courts", page 367, from section 167: "A universal principle as old as the law is that the proceedings of a court without jurisdiction are a nullity and its judgment without effect either on the person or property."

See also:

Mitchell v. St. Maxent, 71 U. S. 237: "Void process confers no right on an officer to sell property, and all acts done under it are absolute nullities."

Gaines v. New Orleans, 73 U. S. 642; "Where sales were irregular, but those who bought the property did it in good faith, and without notice, *they are not protected except by the bar of time prescribed by the law.*"

Sec. 328.01, Wis. Stats.: "The Courts of this state shall take judicial notice of the statutes of the United States and of all the states and territories thereof."

Wisconsin Statutes.

Under the Wisconsin statutes' title to the farm here in question was in the appellant at the time that he filed his petition under Section 75 with the Bankruptcy Court.

Sec. 278.10. FORECLOSURE. "(2) Any party may become a purchaser. But no such sale shall be made or advertised until the expiration of one (1) year from the date when such judgment is perfected;"

Sec. 278.16. NOTICE AND REPORT OF SALE. "The sheriff or referee who makes sale of mortgaged premises under a judgment therefor, shall give notice of time and place of sale in the manner provided by law He shall, within ten (10) days thereafter file with the clerk of court a report of sale and shall immediately after the sale deposit with the clerk of the court the proceeds of sale"

Sec. 278.17. DEED, EXECUTION AND EFFECT. "Upon any such sale being made the sheriff or referee making the same, on compliance with its terms, shall make and execute to the purchaser a deed of the premises sold Such deed or deeds so made and executed by the sheriff as above set forth, shall be forthwith delivered by him to the clerk of court to be held by the clerk until confirmation of sale, and upon confirmation thereof, the clerk of court shall thereupon pay to the parties entitled thereto or to their attorneys the proceeds of sale and shall deliver to the purchaser or purchasers at the sale such deed or deeds upon compliance by such purchaser or purchasers with the terms

of such sale and the payment of any balance of sale price to be paid."

SEC. 281.209. PERIOD OF REDEMPTION MAY BE EXTENDED. "(1) Where any mortgage upon a home, as defined in subsection (2) of section 281.201, has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had in the case of such real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to April 1, 1939, or upon the sale of any such home under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter and prior to April 1, 1939, the period of redemption may be extended for such additional time as the court may deem just and equitable but in no event beyond April 1, 1940."

Conclusion.

In conclusion, as Mr. Justice Reed said in the *Wright* case:

"The mortgage contract was made subject to constitutional power in the Congress to legislate on the subject of bankruptcies. Impliedly, this was written into the contract between petitioner and respondent. 'Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.'

Subsections (n), (o), (p) and (s) of Section 75 of the Bankruptcy Act *specifically and expressly* provide, *again and again*, that upon the filing of the farmer debtor's petition the exclusive and complete jurisdiction shall be and remain in the bankruptcy court. There is no room for construction or doubt here. The language is most emphatic.

The statute puts no requirement on the Federal courts to notify State courts. The filing of the petition is notice to them and to the world.

It is, therefore, respectfully suggested that the purported confirmation of the sale in foreclosure by the State court on September 16, 1935, was an *absolute nullity* because that court then *did not have power* to act. Consequently the farmer debtor *has not been* deprived of his property in his farm because his right of redemption has never been foreclosed. It necessarily follows that his farm is now subject to the jurisdiction of the bankruptcy court in which he filed his petition under Section 75 of the Bankruptcy Act.

We feel that the decision of the Wisconsin Supreme Court both in case No. 120 and No. 121, here under consideration, should be reversed and remanded with instruction that the State court allow proceedings in accordance with the provisions of Section 75 of the Bankruptcy Act.

Respectfully submitted,

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